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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GONZALO MAYORGA,)
)
Defendant.)

No. 3-05-70991 EDL

~~PROPOSED~~ ORDER AND STIPULATION
WAIVING TIME UNDER RULE 5.1 AND
EXCLUDING TIME FROM MAY 26, 2006
TO JUNE 22, 2006 FROM THE SPEEDY
TRIAL ACT CALCULATION
(18 U.S.C. § 3161(h)(8)(A))

The parties appeared before the Court on April 26, 2006. At that time, the Court:
(1) scheduled a new preliminary hearing/arraignment date of May 26, 2006 at 9:30 a.m., before
the Honorable Elizabeth D. Laporte; (2) documented the defendant's waiver of time limits under
Federal Rule of Criminal Procedure 5.1; and (3) documented the exclusion of time under the
Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A), from April 26, 2006 to May 26, 2006.

Because counsel for both the government and the defendant are now scheduled to be out of
the office on May 26, 2006, and because the parties are close to a pre-indictment resolution of
this matter, the parties have agreed, and the Court finds and holds, as follows:

1. The defendant waives the time limits for a preliminary hearing under Federal Rule of
Criminal Procedure 5.1. Failure to grant the requested continuance would unreasonably deny the

1 defense reasonable time necessary for effective preparation, taking into account the exercise of
 2 due diligence and the defendant's counsel's newly scheduled absences from the office, and
 3 would deny the defendant continuity of counsel.

4 2. Counsel for the defense believes that postponing the preliminary hearing is in his
 5 client's best interest, and that it is not in his client's interest for the United States to indict the
 6 case before the currently scheduled preliminary hearing/arraignment date. The parties are close
 7 to a pre-indictment disposition of the case, and expect to have the case resolved in the very near
 8 future.

9 3. The defendant agreed to an exclusion of time under the Speedy Trial Act. Failure to
 10 grant the requested continuance would unreasonably deny both government and defense counsel
 11 reasonable time necessary for effective preparation, taking into account the exercise of due
 12 diligence, both counsel's scheduled absences from the office, and the need for both sides to
 13 investigate the facts of the case, and would deny the defendant and the government continuity of
 14 counsel.

15 4. Given these circumstances, the Court found that the ends of justice served by
 16 excluding the period from May 26, 2006 to June 22, 2006, outweigh the best interest of the
 17 public and the defendant in a speedy trial. Id. § 3161(h)(8)(A).

18 5. Accordingly, and with the consent of the defendant, the Court ordered that the period
 19 from May 26, 2006 to June 22, 2006 be excluded from Speedy Trial Act calculations under 18
 20 U.S.C. § 3161(h)(8)(A) & (B)(iv).

21 4. The Court scheduled a new preliminary hearing/arraignment date of June 22, 2006, at
 22 9:30 a.m., before the Honorable Maria-Elena James.

23 IT IS SO STIPULATED.

24 DATED: _____

 /S/
 TRACIE L. BROWN
 Assistant United States Attorney

27 DATED: _____

 /S/
 BARRY PORTMAN (for STEVEN
 KALAR)
 Attorney for GONZALO MAYORGA

1 **IT IS SO ORDERED.**

2
3 DATED: May 22, 2006

